

May 2019

OECA REDELEGATION OF AUTHORITY
CLEAN WATER ACT

**2-14C. Settlement or Concurrence in Settlement of Civil Judicial Enforcement Actions
(1200 TN 350 2-14C)**

1. AUTHORITY.

- a. To settle or exercise the U.S. Environmental Protection Agency's concurrence in the settlement of civil judicial enforcement actions under the Clean Water Act.
- b. To amend a consent decree pursuant to a civil judicial enforcement action under CWA.
- c. To request the attorney general to amend a consent decree issued pursuant to a civil judicial enforcement action and represent the agency.

2. TO WHOM REDELEGATED.

- a. The director of the Office of Civil Enforcement;
- b. The director of the Office of Site Remediation Enforcement;
- c. The regional counsels.

3. LIMITATIONS.

- a. Except for a headquarters-initiated case, the director of OCE or the director of OSRE must obtain the concurrence of the agency official who initiated the case (that is, either the assistant administrator for the Office of Water, the assistant administrator for the Office of Land and Emergency Management or the appropriate regional administrator) before exercising this authority.
- b. The director of OCE or the director of OSRE may not exercise these authorities for settlements of \$1,000,000 or higher, except for bankruptcy settlements that do not raise issues of national significance.
- c. Regarding CWA cases within OCE jurisdiction,
 - i. Except as provided in 3.c.iv. below, regional counsels may not exercise these authorities either:
 - (1) for headquarters-initiated cases,
 - (2) for multiregional bankruptcy or multiregional insurance receivership settlements, or
 - (3) for enforcement actions which involve a bottom line penalty of \$1,000,000 or higher, except for bankruptcy settlements.
 - ii. Regional counsels must consult with the assistant administrator for the Office of Enforcement and Compliance Assurance prior to exercising this redelegated authority under the following circumstances:

- (1) a proposed settlement would not comport with applicable penalty policies or recover the full amount of economic benefit of noncompliance from a violator not in bankruptcy; or
 - (2) the case raises issues of national significance or otherwise rises to a level of national attention.
 - iii. Regional counsels are responsible in the first instance for identifying such cases and/or issues as they arise, and are expected to inform the director of OCE as soon as they are identified. Particular issues of national interest or concern may also be identified by division directors in OCE. Regional counsels should use discretion in identifying other issues which are nationally significant, yet do not otherwise fall within the guidelines or examples contained therein. Following appropriate consultation between the regional counsel and the director of OCE, or the appropriate OCE division director, regarding the above-referenced issues, OECA may, at the division director level, determine that concurrence of the AA for OECA is appropriate for the matter at hand, in which case concurrence will be required.
 - iv. The limitation of a bottom line penalty of less than \$1,000,000 in 3.c.i. does not apply in actions for which the director of OCE determines that, in light of the issues presented, the concurrence of the AA for OECA is not necessary.
- d. Regarding cases under OSRE jurisdiction, regional counsels may not exercise these authorities for headquarters-initiated OSRE cases, or for multi-regional bankruptcy or multi-regional insurance receivership settlements. Regional counsels should exercise these authorities consistent with the most recent version of the OECA/OSRE CERCLA and RCRA/CWA 311/UST Roles Chart ("Roles Chart") or successor documents, as appropriate.
- e. The director of OSRE may exercise these authorities only as they pertain to CWA Section 311(b)(7)(B), 311(c), and 311(e).

4. REDELEGATION AUTHORITY.

- a. The authority to settle cases under \$500,000 that (i) recapture the economic benefit of non-compliance, except in bankruptcy settlements, and (ii) do not involve issues of national significance may be redelegated to the division director level, and no further.
- b. Regional counsels may not redelegate these authorities further.
- c. An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any official in the chain of command down to the official to whom it has been specifically redelegated.

5. ADDITIONAL REFERENCES. For more information about nationally significant issues and the coordination process generally, see "Revised Consolidated Procedures for Regional and Headquarters Coordination on Regulatory Enforcement Cases Involving Nationally Significant Issues (NSIs)," Susan Shinkman (Feb. 1, 2017) (or most recent version of the NSI memorandum); "Efforts to Improve the Efficiency of Regulatory Enforcement Cases," Cynthia Giles (March 5, 2013); "OCE Efforts to Improve the Efficiency of Regulatory Enforcement Cases," Susan Shinkman (March 5, 2013); "OECA/Regional Procedures for Civil Judicial and Administrative Enforcement Case

May 2019

Redelegation,” Robert Van Heuvelen (Nov. 9, 1994); “Redelegation of Authority and Guidance on Headquarters Involvement in Regulatory Enforcement Cases,” Steven A. Herman (July 11, 1994); “Redelegation of the Assistant Administrator for OECA’s Concurrence and Authority in Settlement of Certain Civil Judicial and Administrative Enforcement Actions,” Steven A. Herman (July 8, 1994) (but this redelegation supersedes any actual redelegation of authority discussed in those memoranda).

6. **SUPERSESSION.** This redelegation supersedes any prior OECA redelegation of Delegation 2-14C.

Date: 5/10/19


Assistant Administrator for the Office of Enforcement and
Compliance Assurance